

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Rabo AgriFinance, Inc.,

Civil No. 08-219 (DWF)
Bankruptcy No. 07-60334

Appellant,

v.

**MEMORANDUM
OPINION AND ORDER**

Wayne Zych and Diane Zych,

Appellees.

Caren L. Stanley, Esq., Jon R. Brakke, Esq., Vogel Law Firm, counsel for Appellant.

David C. McLaughlin, Esq., and Lynnae L. G. Lina, Esq., Fluegel Helseth McLaughlin
Anderson & Brutlag, counsel for Appellees.

INTRODUCTION

This matter came before the Court on February 25, 2008, pursuant to a motion to stay brought by Appellant Rabo AgriFinance, Inc. (“Rabo”). For the reasons stated below, the Court denies Rabo’s motion.

BACKGROUND

This matter involves a Chapter 11 bankruptcy case filed by Wayne and Diane Zych (the “Debtors”). The underlying facts are not in dispute. Rabo, as successor in interest to Rabo AgServices, Inc., financed the Debtors’ cattle feeding and farming operation. In particular, Rabo was secured in 217 head of cattle pursuant to an agricultural security agreement. The Debtors sold the 217 head of cattle through Nicollet Cattle Trading, a subsidiary of GFI America, Inc. (“GFI”), for \$221,811.09 after

adjustments. GFI then resold the cattle to National Beef and issued a check to the Debtors as payment for the cattle. The check was returned for insufficient funds. GFI ultimately filed for bankruptcy under Chapter 11 in the United States Bankruptcy Court of the District of Minnesota. In that case, GFI's lender, Wachovia Capital Finance Corporation ("Wachovia"), initiated an adversary proceeding against GFI, and the Debtors filed a counterclaim against Wachovia alleging claims of conversion and a breach of Wachovia's duties under the Packers & Stockyards Act, 7 U.S.C. § 181, *et seq.* The parties mediated the adversary proceeding and reached a settlement. The Debtors received settlement funds in the amount of \$120,393 ("Settlement Funds"). These funds are currently held in the trust account of Debtors' attorney.

The Debtors then filed for bankruptcy under Chapter 11. In that case, Rabo asserts a security interest in the Settlement Funds on the basis that (1) they are "proceeds" of Rabo's original collateral (the 217 head of cattle); and (2) they constitute a "payment intangible." Rabo filed a Motion for Relief from Automatic Stay, seeking to lift the automatic stay in the Bankruptcy Court to recover possession of the \$120,393 in Settlement Funds. With the consent of the parties, the Bankruptcy Court treated the pleadings as cross-motions for summary judgment at the hearing on Rabo's Motion for Relief from Automatic Stay. On December 18, 2007, the Bankruptcy Court issued an order (1) denying Rabo's motion for relief from stay with regard to the \$120,393 in Settlement Funds; (2) denying Rabo's motion for summary judgment; (3) granting the Debtors' motion for summary judgment; and (4) ordering that Rabo does not hold a

secured or other interest in the settlement proceeds of \$120,393 described in that Order.

Rabo appealed the decision of the Bankruptcy Court and now moves this Court for a stay pending the appeal. Rabo seeks to prohibit the disbursement of the \$120,393 in Settlement Funds presently held in the trust account of the Debtors' attorney.

DISCUSSION

In determining whether to grant a stay pending appeal, the Court considers:

(1) whether Rabo is likely to prevail on the merits of the appeal; (2) whether Rabo will suffer irreparable harm if the stay is denied; (3) whether the Debtors will not be substantially harmed by the stay; and (4) whether the public interest will be served by granting the stay. *In re Martin*, 199 B.R. 175, 176 (Bankr. E.D. Ark. 1996), *aff'd* 116 F.3d 480 (8th Cir. 1997).

The Court first turns to the issue of irreparable harm. Rabo argues that it will be irreparably harmed if a stay is denied. Specifically, Rabo argues that if the Settlement Funds are prematurely disbursed, its position as a secured creditor will be lost.

Conversely, the Debtors argue that Rabo has not established that it will suffer irreparable harm if the Settlement Funds are disbursed. In particular, the Debtors argue that the disbursement of the \$120,393 in Settlement Funds will not eliminate Rabo's ability to recover this amount if it is successful on its present appeal. In so arguing, the Debtors represent that the bankruptcy estate has unencumbered assets available to provide a source of funds for Rabo absent a stay pending appeal. For example, Rabo points out that the estate includes real estate valued at roughly \$150,000 that is free of any liens against

it. Rabo objects to the Debtors' argument in this regard, claiming that its secured position will be lost because those funds will not be proceeds of Rabo's collateral. In addition, Rabo claims that the Debtors cannot give Rabo a lien in otherwise unencumbered assets without harming all unsecured creditors.

The Court concludes that Rabo has not made an adequate showing that it is likely to suffer irreparable harm, or that any such harm is imminent, and not remote or speculative. *See In re City of Bridgeport*, 132 B.R. 81, 83 (Bankr. D. Conn. 1991). Instead, the Court is satisfied by the Debtors' argument that the bankruptcy estate will have adequate funds to allow Rabo to recover the \$120,393 in the event that Rabo is successful on its appeal. Because a failure to show irreparable harm is a prerequisite for the issuance of a stay, Rabo's motion for a stay pending appeal is denied. *See In re City of Bridgeport*, 132 B.R. at 83 ("A showing of probable irreparable harm is the principal prerequisite for the issuance of a stay."). The Court need not address the remaining factors.¹

The Court notes that it is somewhat perplexed by the parties' continued litigation of and failure to settle the present dispute. The Court assumes that the \$120,393 at issue here is a relatively small amount when considering the attorney fees involved in litigating the issue. Perhaps it goes without saying that the Court believes that it is in the best

¹ Consistent with the views expressed by the Court at the hearing, the Court considers the legal issues involved in the determination of likelihood of success on the merits as a much closer call than it appears the Bankruptcy Court and parties believe them to be. However, considering the Court's finding that there has been no showing of irreparable harm, the Court declines to consider the merits of the appeal until it has been fully briefed and argued by the parties.

interests of the parties to negotiate a resolution of this dispute. If the Court may be of assistance in this matter, the parties should contact Gina Olsen, Calendar Clerk for Judge Donovan W. Frank, at 651-848-1296.

CONCLUSION

Accordingly, **IT IS HEREBY ORDERED** that:

1. Rabo's Motion to Stay Pending Appeal (Doc. No. 4) is **DENIED**.

Dated: February 26, 2008

s/Donovan W. Frank
DONOVAN W. FRANK
Judge of United States District Court